

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAMION WELLS,

Defendant.

8:01CR113

MEMORANDUM AND ORDER

This matter is before the court on the defendant's motion to vacate under [28 U.S.C. § 2255](#), [Filing No. 221](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court," the court must order the United States Attorney to respond to the motion. *Id.*

After a jury trial, defendant was found guilty on Count IV of the indictment charging him with possession of crack cocaine with intent to distribute in violation of [21 U.S.C. § 841](#). Defendant filed a direct appeal challenging his conviction and sentence. On February 11, 2004, the Eighth Circuit affirmed the decision of the district court. [Filing No. 115](#). Defendant's writ of certiorari filed with the United States Supreme Court was denied on June 1, 2004. [Filing No. 119](#). Defendant thereafter filed a motion to reduce his sentence based on the crack cocaine Amendment 706, [18 U.S.C. 3582\(c\)\(2\)](#). [Filing No. 149](#). The court denied the motion, [Filing No. 153](#). The defendant

appealed this ruling, and the Eighth Circuit denied the appeal for lack of jurisdiction. [Filing No. 164](#) and [167](#). Defendant filed further motions, including a motion for writ of coram nobis, [Filing No. 169](#); a motion to reduce sentence, [Filing No. 172](#); and a motion to correct sentence, [Filing No. 187](#), all of which were denied by this court.

On initial review, the court finds that “it does ... plainly appear that the defendant is entitled to no relief.” Defendant’s motion for relief is frivolous and without merit. In addition, the defendant previously filed a motion for habeas relief pursuant to [28 U.S.C. § 2255](#). [Filing No. 120](#). The court denied the same, finding in favor of the government and against the defendant. [Filing No. 129](#) and [Filing No. 130](#). The court finds this is a successive petition and likewise denies it on that basis.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is appropriate and defendant’s motion, [Filing No. 221](#), is denied.
2. A separate judgment will be entered in accordance with this Memorandum and Order.

Dated this 29th day of January, 2014.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge